Minutes of the 102nd meeting of the Board of the EHRC

22 March 2022 (08:45-11:45)
Mercure Hotel, Manchester, M1 4PH

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Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Suzanne Baxter; Jessica Butcher; David Goodhart; Alasdair Henderson; Helen Mahy; Akua Reindorf; Dr Lesley Sawers and Su-Mei Thompson.

Officers
Marcial Boo, Chief Executive Officer
Angus Clearly, Senior Principal, Inquiries and Intelligence team (Item 7)
Ben Coates, Chief of Staff
Melanie Field, Chief Strategy and Policy Officer
Stephen Hardwick, Strategic Communications Adviser (items 7-10)
Jackie Killeen, Director of Regulation
Callum MacInnes, Principal, Planning, Performance and Governance
Sarah Whelan, Senior Associate, Planning, Performance and Governance

Guests
Martyn Jones, Interim Chair, EHRC Wales Committee
Charles Ramsden, Government Equalities Office (GEO)

Observing:
Fahima Sharif, Senior Associate, Private Office

1. Chairwoman's welcome and apologies.

1.1 The Chairwoman welcomed attendees. Apologies for absence were received from Commissioners Pavita Cooper and Mark McLane, and from Cath Denholm, Chief Operating Officer.

2. Declarations of interest

2.1 No declarations of interest were received.

3. Minutes of the 101st Board meeting (EHRC 102.01)

3.1 Akua Reindorf requested the word 'protective' be changed to 'protected' at point 5.6. Susan Johnson's name was removed as an attendee. The Board then approved the minutes of the meeting of 23 February 2022 as an accurate record.

4. Actions arising (EHRC 102.02)

4.1 The Board reviewed and approved the actions log.

5. Committee / Commissioner Working Group (CWG) updates

5.1 The Scotland Commissioner advised that the Committee's meeting on 18 March had discussed: the single and separate-sex spaces guidance; the UK Government's response to the Commission on Race and Ethnic Disparities (CRED) report; ways in which the Board effectiveness review could be extended to the Committee; and a new schedule of Committee meetings. The Chairwoman advised that a discussion with the Scottish Human Rights Commission had taken place and a joint statement was being developed.

5.2 The Interim Chair of the Wales Committee updated the Board on Committee membership, advising that the recruitment of new members will commence shortly.

5.3 Caroline Waters, member of the Disability Advisory Committee (DAC), stated how positive the final Committee meeting had been on 08 March. Members had been provided with a report that had highlighted the Committee's successes, including on assisted dying, housing, and disability language. The Committee had welcomed the ability to input into the Commission's work. Its members had been offered the opportunity to take part in a workshop in July to discuss our new Strategy and our approach to engaging stakeholders in future. The Board sought and received assurance that a broad network of disability stakeholders would be maintained, and requested that thanks be recorded for the Committee Chair and members of the DAC for their invaluable work.

Action: Governance Team to add the Disability Advisory Committee report as an information paper to the May Board meeting.

Action: Chief Strategy and Policy Officer to schedule a July workshop with DAC members.

5.4 The Chair of the Audit and Risk Assurance Committee (ARAC) stated that an item on risk would go to the 20 April ARAC meeting before coming to Board in May. She had been pleased to participate at the Finance, Planning and Governance directorate away day on 17 March. She encouraged other Commissioners to join directorate away days where they had the opportunity to do so. The People and Workspaces Chair advised that she had been linking in with the People Team for many years and had found doing so very useful.

5.5 The Chair of the Commissioner Working Group on Human Rights Monitoring advised that the Sub Committee on Accreditation (SCA) sessions were currently taking place to consider whether or not requests for a special review of the Commission's status would be granted. The Chairwoman advised that the House of Commons and House of Lords Joint Committee on Human Rights had written to the UN in support of the Commission.

6. CEO Report & Chairwoman's update (EHRC 102.03 and annexes A-F)

6.1 Commissioners expressed how pleased they were with the Commission's response to the government consultation on reform to the Human Rights Act. The Chairwoman advised she had been in discussion with key stakeholders on the matter.

6.2 Commissioners welcomed the planned publication in April of guidance for public bodies on their duties under the Public Sector Equality Duty in their use of Artificial Intelligence. Caroline Waters advised that it was worth linking with the Recruitment and Employment Confederation.

6.3 Commissioners asked about the timescales for public sector employers to report on their gender pay gap. It was noted that, although reporting was important, the Commission actually needed to see robust action plans from employers too. Employers were also often confused between gender pay gaps and equal pay. The Executive provided information on timescales, stating that they are looking into publishing the names of non-reporters.

Action: Director of Regulation to update the Board via the May CEO report.

Action: Governance Team to schedule a deep dive session on this at the July Board meeting.

6.4 Commissioners requested further information about the Commission's responsibilities as a regulator of accessible public sector websites, stating that they would encourage more active regulatory work in this area. This would be welcomed by disabled communities.

Action: Director of Regulation to update the Board via the May CEO report.

6.5 Helen Mahy asked why the Money and Mental Health Policy Institute believed that many sectors are disregarding their legal responsibilities to provide services to people with mental health problems. Commissioners commented that there continue to be difficulties for call centres adequately to support customers with mental health issues. The Executive advised that we are writing to regulators to remind them of their responsibilities.

6.6 Commissioners requested further information on the race legal support fund. Executive advised that the number of cases are increasing.

6.7 Commissioners requested an update following the Global Alliance for National Human Rights Institutions (GANHRI) sub-committee on accreditation (SCA) meeting today.

Action: Chief Operating Officer to provide update on the SCA meeting for inclusion in the CEO's weekly email to Commissioners.

6.8 The Board asked whether the Commission would communicate externally on the human rights issues following the Russian invasion of Ukraine. It was determined that this could be difficult, given it related to international human rights and out of the Commission's remit. The Executive would continue to advise the Board as appropriate.

6.9 Commissioners were advised that the Secretary of State, Liz Truss, would lay the Commission's 2022-25 Strategic Plan in Parliament in the week of 28 March.

6.10 The Executive advised that Commission staff were generally content that the staff survey results had been shared internally. An action plan had been circulated in addition.

6.11 The Chairwoman advised the Board that external consultants would conduct interviews with Commissioners in relation to the Board effectiveness review, and that the new Wales Commissioner will start on 01 April. Changes will be subsequently made to committee and working group memberships to ensure equal allocation of members, and recruitment will start in June for new Commissioners. GEO were asked to ensure an appropriate balance of Board members with protected characteristics, appropriate skills and to consider succession planning in finance skills for ARAC.

6.12 The Chairwoman also advised that she had had a positive meeting with Kemi Badenoch MP, Minister for Equalities, on the government's response to the 2021 report from the Commission on Race and Ethnic Disparities.

7. Health and social care for low paid ethnic minority workers (EHRC 102.04 and 102.04a)

7.1 The Board discussed the inquiry report, stating it was well written and approved its recommendations, whilst making the following observations:

a) That a concern remained regarding the definition of ethnic minorities within the data descriptions; that intra-minority race discrimination needed to be considered; that most of the data is survey based and NHS focused; to note the particular difficulties faced by migrant workers and older women; to consider whether the professional progression structure in social care could be made clearer; the importance on travel time for specific roles; the need to explain the difference in the pay structure for outsourced roles; and that we might reference the Commission's 2014 report 'The Invisible Workforce: Employment Practices in the Cleaning Sector'.

Action: Suzanne Baxter to share notes with the Director of Regulation on her expertise on outsourcing in this industry.

b) The Scotland Commissioner advised that the draft inquiry report was well received by the Scotland Committee. They proposed that there should not be an over-emphasis on data limitations as this could detract from the

recommendations. They also favoured more explicit mention of structural inequalities and differences in the sector between the nations of Britain.

c) The Interim Chair of the Wales Committee advised that they too had welcomed the report and highlighted four key areas: that an emphasis on data limitations could distract from the report findings; that the use of qualitative methods is appropriate and rigorous and should be framed as such; that it was sometimes unclear whether issues relate only to ethnic minorities or to all low paid workers; and that there is a need to reference the importance of leadership cultures in organisations.

d) Commissioners asked to be updated on the title of the report and the proposed communications strategy. The Executive assured the Board that a handling plan was being developed and would be shared with the Board in due course.

Action: CEO to include an update in the weekly email to Commissioners.

8. Single and Separate-Sex Spaces Guidance (EHRC 102.05, annex A and annex B)

8.1 The Board thanked the team for their hard work on the guidance, approving it in principle, subject to their requested amendments being included. The proposed approach to communications was also approved. The Board further agreed to share the guidance with the Scotland and Wales Committees in its final version prior to publication.

Action: Director of Regulation to share the final guidance with the Scotland and Wales Committees prior to publication.

8.2 The Chairwoman and Commissioners agreed that the courts may utilise the guidance as much as the Code of Practice. Commissioners noted that, owing to the few previous legal cases in this area, it was vital both to be legally correct and accessible to the target audience.

8.3 The Board advised that the guidance should be aimed at employers as well as service providers, whilst recognising the difficulties of applying such policies in the workplace. Consulting businesses on the specific examples would be advantageous.

Action: Director of Regulation to meet with service providers and employer organisations.

8.4 Commissioners proposed a number of specific amendments to the detail of the guidance.

Action: Director of Regulation to make the requested amendments and share the final version with named Commissioners and the Chairwoman.

8.5 The Board emphasised the need for a robust, clear communication strategy to accompany the publication of the guidance, making the following observations: that it was not necessary to include a forward; that we should be resourced effectively for a possible increase in Freedom of Information requests and that staff are appropriately briefed before publication; and that we should line up engagement and media opportunities. The Executive advised that any public enquires would be directed to the Equality Advisory Support Service, who would be briefed in advance. The Chairwoman will write to the Secretary of State to advise that the guidance will be published on the 04 April.

Action: Private Office to draft a letter to the Secretary of State.

9. Government response to the Commission on Race and Ethnic Disparities (CRED) (EHRC 102.06)

9.1 The Chairwoman requested that the wording of the cover paper be corrected to reflect that she had not had a 'private' but an official meeting with Ministers.

Action: Chief of Staff to delete the word 'private' from the paper.

9.2 The Board welcomed the opportunity to comment, thanked the team for their work, and provided the following observations: that there are policy differences in this area from the governments in Scotland and Wales; that stakeholders are rethinking their negative responses of last year and are now more positive about the report; and that we should continue to listen to civil society campaigners. The Executive assured the Board that work was being undertaken to consider the three nations approaches to this work.

10. Any other business.

10.1 The Chairwoman asked the GEO representative if there was an update on the Commission's 2022 spending settlement. The Board were advised that there continues to be a delay in the 2022-23 budget allocation, and that the problem extends across the Cabinet Office and does not relate just to the Commission.

10.2 The Board said farewell to Martyn Jones, interim Wales Commissioner, with the Chairwoman thanking him for his excellent input over the last 12 months.

10.4 The Chairwoman advised the Board of the forthcoming appointment of the new Wales Commissioner, Eryl Besse, from 1 April 2022.

10.4 The Chairwoman encouraged Commissioners to attend the chairing meetings training taking place on 31 March, being run by Dods Training.

10.5 The Chairwoman advised that the next Board meeting would be in person in London on 26 May.

Agreed by the Board at its meeting of 26 May 2022